

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOROTHY JEAN KIPP
Claimant

VS.

DILLON COMPANIES, INC.
Respondent
Self-Insured

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Docket No. 236,475

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Bruce E. Moore on January 28, 2000. The Appeals Board heard oral argument June 9, 2000.

APPEARANCES

Larry A. Bolton of Hutchinson, Kansas, appeared on behalf of claimant. Scott J. Mann of Hutchinson, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded benefits for a 5 percent general body disability based on functional impairment. The ALJ denied work disability because claimant earned a comparable wage after the injury working for another employer and then left that employment for reasons other than the injury. Claimant argues for work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence, the Appeals Board concludes the Award should be affirmed.

Claimant injured her low back on May 1, 1997, while moving a tote from cart to pallet in the course of her duties for respondent. At the time of the injury she was working in a function referred to as broken stock.

Claimant received medical treatment from Dr. Eyster and then Dr. William D. Kossow. Dr. Kossow released claimant to return to work with restrictions in November 1997. By the time claimant was released to return to work, most of the broken stock function had been transferred to another company, Matrix, in Fountain, Colorado. Claimant did not have enough seniority to qualify for one of the few remaining positions. Claimant was initially released to return to work for respondent in a clerical position. The position paid less than claimant had been earning and she asked to be placed in a janitorial job. Her request was granted and claimant worked briefly in the janitorial job.

While claimant was working in the janitorial job, and because of concerns about what claimant could or should be doing, respondent sent claimant for evaluation by Dr. John P. Estivo. Respondent considered Dr. Kossow's opinions to be inconsistent. Claimant testified that Dr. Estivo did not believe she could do any of the jobs with respondent. Mr. Bill Schrag, who was responsible for all aspects of the warehouse, testified that Dr. Estivo's restrictions would have allowed claimant to work in a clerical position.

After receiving Dr. Estivo's recommendation, respondent met with claimant. At this time claimant proposed that she transfer to a position with Matrix in Colorado. When respondent moved this function to Matrix, respondent made arrangements for Matrix to take on employees whose jobs had been eliminated in Hutchinson.

Claimant did take a position with Matrix in Colorado and worked there for several months at essentially the same wage she was earning at the time of the injury. After working there for several months, claimant voluntarily quit. She testified she did so for personal reasons, not because of her injury.

The ALJ ruled that claimant should be limited to functional impairment because after the injury she earned the same wage she earned before the injury but chose, for reasons other than the injury, to terminate that comparable wage employment. The Board agrees. The Board does so for the reasons set out in more detail by the ALJ in the Award. The Board agrees with the findings of fact and conclusions of law stated in the Award and adopts them as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore on January 28, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Larry A. Bolton, Hutchinson, KS
 Scott J. Mann, Hutchinson, KS
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director